



March 29, 2005

ENGROSSED SENATE BILL No. 322

DIGEST OF SB 322 (Updated March 28, 2005 2:01 pm - DI 107)

Citations Affected: IC 36-1; IC 36-2.

Synopsis: Local spending on criminal defense and elected county office holders. Provides that a county, municipality, township, or municipal corporation may not pay the legal expenses of an employee or officer to defend against a criminal action, certain civil actions, or a proceeding in which the employee or officer is charged with an infraction. Requires reimbursement of the reasonable expenses of the employee or officer (as determined by the local unit) if the employee or officer is found to have no criminal or civil liability. Provides that in the year in which a newly elected county officer takes office, the county fiscal body may change the compensation for holding the county office if: (1) the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and (2) the county fiscal body approves the change.

Effective: January 1, 2005 (retroactive); upon passage.

Bray, Mrvan, Antich-Carr

(HOUSE SPONSORS — FOLEY, AYRES)

January 6, 2005, read first time and referred to Committee on Judiciary.
February 10, 2005, amended, reported favorably — Do Pass.
February 15, 2005, read second time, ordered engrossed.
February 16, 2005, engrossed.
February 17, 2005, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 8, 2005, read first time and referred to Committee on Judiciary.
March 28, 2005, amended, reported — Do Pass.

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ES 322—LS 7622/DI 107+



March 29, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 322

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 36-1-17 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON
3 PASSAGE]:

4 **Chapter 17. Defense Expenses for Unit and Municipal**
5 **Corporation Officers and Employees**

6 **Sec. 1. As used in this chapter, "criminal action" means a**
7 **prosecution against an individual alleging the commission of a**
8 **felony or misdemeanor.**

9 **Sec. 2. Except as provided in section 3 of this chapter, a unit or**
10 **municipal corporation may not pay the legal expenses incurred by**
11 **an officer or employee of the unit or the municipal corporation:**

12 **(1) in defending against:**

13 **(A) a criminal action;**

14 **(B) a civil action brought by the attorney general of the**
15 **United States, a United States attorney, the attorney**
16 **general of Indiana, or an Indiana prosecuting attorney**
17 **under:**

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- (i) IC 34-24-1;
- (ii) IC 34-24-2;
- (iii) IC 34-24-3;
- (iv) IC 5-11-5;
- (v) IC 5-11-6;
- (vi) IC 5-13-6;
- (vii) IC 5-13-14-3; or
- (viii) 18 U.S.C. Sec. 1964; or

(C) a proceeding to enforce an ordinance or a statute defining an infraction; or

(2) who is the target of a grand jury investigation, if the scope of the investigation includes a claim that the officer or employee committed a criminal act.

Sec. 3. (a) An officer or employee of a unit or municipal corporation who is charged with:

- (1) a crime; or
- (2) an infraction;

relating to an act that was within the scope of the official duties of the officer or employee may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred in the officer's or employee's defense against those charges, if all charges have been dismissed or the officer or employee has been found not guilty of all charges. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred in the officer's or employee's defense against those charges, if all charges have been dismissed or the officer or employee has been found not guilty of all charges.

(b) An officer or employee of a unit or municipal corporation who is the target of a grand jury investigation may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred by the officer or employee resulting from a grand jury investigation, if the grand jury fails to indict the officer or employee and the acts were within the scope of the official duties of the officer or employee. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred by the officer or employee as a result of the grand jury investigation, if the grand jury fails to

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indict the officer or employee.

(c) An officer or employee of a unit or municipal corporation who is the defendant in a civil action described in section 2(1)(B)(i) through section 2(1)(B)(viii) of this chapter and brought by a person described in section 2(1)(B) of this chapter that involves an action within the scope of the official duties of the officer or employee may apply to the fiscal body of the unit or municipal corporation for reimbursement of reasonable and customarily charged expenses incurred in the officer's or employee's defense in the civil action. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses incurred in the officer's or employee's defense against the civil action if:

- (1) all claims that formed the basis of the civil action have been dismissed; or
- (2) a judgment is rendered in favor of the officer or employee on all counts in the civil action.

Sec. 4. The fiscal body of a unit or municipal corporation may:

- (1) act on an application under section 3 of this chapter without a hearing; and
- (2) require an officer or an employee seeking reimbursement under this chapter to:
 - (A) answer questions under oath; or
 - (B) provide information or documents concerning the case or investigation for which the officer or employee is seeking reimbursement.

SECTION 2. IC 36-2-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 13. (a) Except as provided in subsection (b), the compensation of an elected county officer may not be changed in the year for which it is fixed. The compensation of other county officers, deputies, and employees or the number of each may be changed at any time on:

- (1) the application of the county fiscal body or the affected officer, department, commission, or agency; and
- (2) a majority vote of the county fiscal body.

(b) In the year in which a newly elected county officer takes office, the county fiscal body may at any time change the compensation for holding the county office for that year if:

- (1) the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and
- (2) the county fiscal body votes to approve the change.

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1 **SECTION 3. An emergency is declared for this act.**

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SENATE MOTION

Madam President: I move that Senator Mrvan be added as coauthor of Senate Bill 322.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 322, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, line 14, delete "based on a criminal action;" and insert **"brought by the attorney general of the United States, a United States attorney, the attorney general of Indiana, or an Indiana prosecuting attorney under:**

- (i) IC 34-24-1;**
- (ii) IC 34-24-2;**
- (iii) IC 34-24-3;**
- (iv) IC 5-11-5;**
- (v) IC 5-11-6;**
- (vi) IC 5-13-6;**
- (vii) IC 5-13-14-3; or**
- (viii) 18 U.S.C. Sec. 1964;"**

Page 2, line 7, delete "that individual's acts as an officer or employee" and insert **"an act that was within the scope of the official duties of the officer or employee"**.

Page 2, line 9, after "reasonable" insert **"and customarily charged"**.

Page 2, line 12, delete "the" and insert **"all"**.

Page 2, line 12, after "charges." insert **"The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred in the officer's or employee's defense against those charges, if all charges have been dismissed or the officer or employee has been found not guilty of all charges."**

Page 2, line 14, delete "relating to that".

Page 2, line 15, delete "individual's acts as an officer or employee".

Page 2, line 17, after "reasonable" insert **"and customarily charged"**.

Page 2, line 19, delete "employee." and insert **"employee and the acts were within the scope of the official duties of the officer or employee. The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses, as determined by the fiscal body of the unit or municipal corporation, incurred by the officer or employee as a result of the grand jury investigation, if the grand jury fails to indict the officer or employee."**

Page 2, line 21, delete "based on a criminal action" and insert

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"described in section 2(1)B(i) through section (2)(1)(B)(viii) of this chapter and brought by a person described in section 2(1)(B) of this chapter".

Page 2, line 22, delete "relates to that individual's acts as an officer or employee" and insert **"involves an action within the scope of the official duties of the officer or employee"**.

Page 2, line 24, after "reasonable" insert **"and customarily charged"**.

Page 2, line 25, after "action" insert **". The fiscal body of the unit or municipal corporation shall reimburse the officer or employee for reasonable and customarily charged expenses incurred in the officer's or employee's defense against the civil action"**.

Page 2, line 26, delete "either:".

Page 2, line 27, delete "(A)".

Page 2, run in lines 26 through 27.

Page 2, delete lines 29 through 31.

Page 2, line 32, after "(2)" insert **"a judgment is rendered in favor of"**.

Page 2, line 32, delete "prevailed" and insert **"on all counts"**.

and when so amended that said bill do pass.

(Reference is to SB 322 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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SENATE MOTION

Madam President: I move that Senator Antich-Carr be added as coauthor of Engrossed Senate Bill 322.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred Senate Bill 322, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Replace the effective date in SECTION 1 with "[EFFECTIVE UPON PASSAGE]".

Page 3, line 3, delete "2(1)B(i)" and insert "**2(1)(B)(i)**".

Page 3, line 4, delete "(2)(1)(B)(viii)" and insert "**2(1)(B)(viii)**".

Page 3, after line 26, begin a new paragraph and insert:

"SECTION 2. IC 36-2-5-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2005 (RETROACTIVE)]:

Sec. 13. **(a) Except as provided in subsection (b)**, the compensation of an elected county officer may not be changed in the year for which it is fixed. The compensation of other county officers, deputies, and employees or the number of each may be changed at any time on:

- (1) the application of the county fiscal body or the affected officer, department, commission, or agency; and
- (2) a majority vote of the county fiscal body.

(b) In the year in which a newly elected county officer takes office, the county fiscal body may at any time change the compensation for holding the county office for that year if:

- (1) the county officer requests the compensation change or, in the case of the county executive body, a majority of the county executive body requests the change; and**
- (2) the county fiscal body votes to approve the change.**

SECTION 3. **An emergency is declared for this act.**"

and when so amended that said bill do pass.

(Reference is to SB 322 as printed February 11, 2005.)

FOLEY, Chair

Committee Vote: yeas 10, nays 0.

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